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In the Supreme Court

OF THE

United States

OCTOBER TERM, 1964

No.

U. S. INDUSTRIES, INC.; UNITED CONCRETE PIPE CORPORATION; UNITED STATES STEEL CORPORATION; KAISER STEEL CORPORATION; AMERICAN PIPE AND CONSTRUCTION COMPANY; SMITH-SCOTT, INC.; LLOYD R. EARL; ROBERT V. EDWARDS; ERNEST L. ISLEY; RICHARD I. YOUNG; D. N. CHAMBERLAIN; CHARLES E. LAMAR; ROBERT C. SCHRAGE; ELLIOTT E. BRAINARD; LAWRENCE R. TELLENAERE; DALE E. McCOIG; THOMAS M. BYRD; JAMES A. MAGETTI; J. G. THOMPSON; HERBERT THODY; VICTOR WEISMANN; FRANK COOK; PAUL WING; and WILLIAM N. SCOTT, *Petitioners,*

vs.

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION, THE HONORABLE HARRY C. WESTOVER, JUDGE OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION, UNITED STATES OF AMERICA, Plaintiff in Criminal Nos. 33,338, 33,339, 33,340, 33,341, and 33,342, BATRIS W. PEROVICH, plaintiff in Civil No. 63-278-HW; NORTHWEST PIPE LININGS, Plaintiff in Civil No. 63-279-HW; INPLACE LININGS, INC., Plaintiff in Civil No. 63-321-HW; NO-JOINT CONCRETE PIPE CO., Plaintiff in Civil No. 63-928-HW; NO-JOINT CONCRETE PIPE CORP. OF SOUTHERN CALIFORNIA, et al., Plaintiffs in Civil No. 64-374-HW; and W. M. LYNCH CO., et al., Plaintiffs in Civil No. 64-858-HW, *Respondents.*

BRIEF ON BEHALF OF "NO-JOINT" AND "PEROVICH" RESPONDENTS IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I

STATEMENT OF THE CASE

This proceeding involves a memorandum prepared by attorneys in the Antitrust Division, United States Department of Justice. The memorandum was *filed* in certain criminal antitrust cases in connection with the sentencing of the defendants all of whom had entered pleas of *nolo contendere*.[1] This brief is filed on behalf of the real parties in interest—the No-Joint plaintiffs[2] and the Perovich plaintiffs,[3] in six cases pending in the Southern District of California, Central Division.

The substantive allegations of the complaints in the No-Joint cases are substantially identical. They charge that beginning about 1950, defendants and certain co-conspirators in violation of Sections 1 and 2 of the Sherman Act (15 U.S.C. 1, 2) engaged in a combination and conspiracy to restrain trade in and to monopolize the pro-

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[1]The term "criminal cases" refers to the five indictments (described hereinafter) filed in the United States District Court for the Southern District of California, Central Division, in which the corporate petitioners and some of the individual petitioners were named defendants. The case numbers of these criminal cases are 33338, 33339, 33340, 33341 and 33342.

[2]For convenience, the plaintiffs in the following three cases are referred to herein as the No-Joint plaintiffs and the cases shall be referred to as the No-Joint cases. *No-Joint Concrete Pipe Company v. American Concrete Agricultural Pipe Association, et al.*, No. 63-928-HW; *No-Joint Concrete Pipe Corp. of Southern California et al. v. American Concrete Agricultural Pipe Association, et al.*, No. 64-374-HW; *W. M. Lynch Co., et al. v. American Concrete Agricultural Pipe Association, et al.*, No. 64-858-HW.

[3]For convenience, the plaintiffs in the following three cases will be referred to as the Perovich plaintiffs and the cases shall be referred to as the Perovich cases. *Batris W. Perovich, et al. v. Pipe Linings, Inc., et al.*, 63-278-HW; *Northwest Pipe Linings, et al. v. Pipe Linings, Inc., et al.*, No. 63-279-HW; *Inplace Linings, Inc. et al.*, No. 63-321-HW.

duction and sale of concrete pipe and that the substantial terms of that conspiracy consisted of agreements to fix prices, divide territories, allocate customers and submit collusive bids. The complaints further allege that when the advent of the No-Joint machine threatened to upset that conspiracy and to secure for plaintiffs a substantial portion of business theretofore enjoyed by the alleged conspirators, defendants, in furtherance of the aforesaid combination and conspiracy, agreed by various means and methods to eliminate the competition of the plaintiffs and the No-Joint machine. Among the means alleged were agreements by defendants (1) to falsely and maliciously disparage pipe produced by the patented No-Joint machine, (2) to preclude No-Joint concrete pipe from being specified as an alternate to pre-cast concrete pipe produced by the defendants, (3) to submit bids at cost or less than cost, for the purpose of preventing plaintiffs from securing jobs and (4) to require contractors to buy pipe from defendants on an "all or none" basis to preclude the use of the No-Joint machine. Plaintiffs in each case seek treble damages pursuant to Section 4 of the Clayton Act. (15 U.S.C. 15.)

The amended complaints in the Perovich cases are also substantially identical. Each complaint contains two counts. The first count of each Perovich complaint alleges a conspiracy among the defendants to divide the business of inplace rehabilitation of steel and cast iron pipe and further alleges that, pursuant to that conspiracy, defendants agreed to apportion among themselves the taking of contracts below cost to preclude plaintiffs from securing such business. The second count alleges a conspiracy

among the defendants to allocate and divide among themselves the sale of concrete pipe in defined geographical regions. It also alleges that defendants allocated among themselves inplace rehabilitation of pipe and the sale and installation of new concrete pipe. Each plaintiff seeks treble damages under Section 4 of the Clayton Act. (15 U.S.C. 15.)

The proceedings below from which this petition for a writ of certiorari arises, can be summarized as follows:

On March 10, 1964, a federal grand jury in Los Angeles returned five indictments (the criminal cases).[4] Each of these indictments charged the named defendants with violations of the Sherman Act (15 U.S.C. 1) in the steel and concrete pipe industries. Specifically, each indictment charges, with respect to a delineated product line,[5] that the defendants named therein rigged bids and/or allocated markets.

On March 30, 1964, all defendants in all the criminal cases tendered pleas of *nolo contendere* which were accepted by the Court (Judge Albert Lee Stephens, Jr.) over the objection of the Government. On the date that those pleas were tendered and accepted, defendants, relying on the existence of the "private treble actions which are pending", urged the Court to seal the report of the

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[4]It is significant to point out that the first No-Joint case (No. 63-928-HW) and *all* of the Perovich cases were filed more than nine months *before* the return of the indictments on March 10, 1964.

[5]The product lines involved in each case are as follows: 33338—concrete pipe, pressure and non-pressure; 33339—large diameter steel pipe; 33340—large diameter pipe—steel and concrete; 33341—small diameter steel pipe; 33342—small diameter pipe—steel and concrete.

probation officer so that the data contained therein would be "confidential". (R. p. 127.) The Court granted this request. (Id.)

At a hearing before Judge Stephens in the criminal cases on April 13, 1964, defendants renewed this request for confidentiality "in the light of the special problem . . . of the treble damage case(s) . . ." (R. pp. 132-135.) At that time, the Court on the defendants' urging, ordered the Government to submit to the probation officer whatever information it deemed material to sentencing. And, upon the assurance by the Court that it would "have an opportunity to be heard in open court on the day of the sentencing" the Government offered no opposition to this proposal. (Id.)

Thereafter, the Government prepared a Memorandum captioned (so far as we know) "Memorandum Relating to the Imposition of Sentences and Fines". On May 12, 1964, the Government tendered this document to one of the deputy clerks of the Court below. But upon the order of Judge Stephens the Clerk refused to "file" the Memorandum. The Memorandum was, however, forwarded to the probation officer for the Southern District of California and he included it as part of his pre-sentencing report.

After the document had been transmitted by the probation officer to Judge Stephens, counsel for one or more of the defendants in the criminal cases requested an opportunity to examine the Government Memorandum. Judge Stephens then telephoned the Antitrust Division office in Los Angeles and requested that they permit the defendants' lawyers to read it. The Government (through

Mr. Stanley E. Disney, Chief, Los Angeles office of the Antitrust Division) took the position in this conversation with Judge Stephens that it would oppose such disclosure to the defense lawyers *unless the document would be filed and become part of the pleadings in the criminal cases.* In taking this position, the Government maintained that the Memorandum contained "grand jury material". Judge Stephens agreed that the Memorandum would be filed but under seal, and he then made it available to the defendants' lawyers. (R. p. 140.)

At the sentencing hearing in the criminal cases on June 19, 1964, Judge Stephens acknowledged that the Government Memorandum had been filed under seal. He said:

> "I told Mr. Disney (Chief, Los Angeles Office, Antitrust Division) that I would file that document. It would be sealed but it would be by my order available to counsel for all the defendants. That is what has been done." (R. p. 140.)

None of these "sealing orders" was ever reduced to writing. However, the Clerk of the Court below made the following entry on the docket sheet of each of the criminal cases:

> "Filed under seal memo. Govt. relating to Imp. sent. and fines—document placed in safe in Room 231. MD. JS. 3s. (S)"

On July 1, 1964, the No-Joint plaintiffs filed a motion (in which the Perovich plaintiffs joined) urging Judge Westover to enter an order which would have either vacated or modified, in the alternative, the sealing order

entered by Judge Stephens to permit these plaintiffs access to the Government Memorandum. (R. pp. 4-32.)

These motions came on for hearing before Judge Westover on July 13, 1964. At this hearing, Judge Westover observed:

> . . . I don't feel justified in attempting to vacate an order made by Judge Stephens in a criminal case. I think your procedure should be to try to get before Judge Stephens on some sort of a motion to modify the order. I can't tell you how to get at this, I don't know, but you will just have to try and see whether or not it will stand up." (R. pp. 157-158.)

The following day, counsel for the No-Joint plaintiffs noticed the deposition of Mr. Stanley E. Disney, Chief of the Los Angeles Office of the Antitrust Division, for August 5, 1964, and obtained from the Clerk of the Court below a subpoena, under Rule 45 (d), F.R.C.P., directing Mr. Disney to bring the "Government Memorandum" with him to his deposition. Later a revised notice of deposition changed the return date of the subpoena to September 5, 1964. The procedure followed by plaintiffs in this case (i.e., a deposition subpoena directing Mr. Disney to bring with him a copy of the sealed document) is exactly the same as was followed in *Olympic Refining Co. v. Carter*, 332 F.2d 260 (9th Cir. 1964); cert. denied 85 S.Ct. 186 (1964).

On August 31, 1964, the Government noticed a motion before Judge Stephens in the criminal cases to (1) amend the sealing order and (2) quash the subpoena to Mr. Disney. This motion was noticed for hearing on Septem-

ber 14, 1964 before Judge Stephens. On or about September 10, counsel for the No-Joint plaintiffs, in a pleading captioned not only in the criminal cases but in the No-Joint cases as well, filed a "Memorandum on Behalf of 'No-Joint Plaintiffs' in Respect to the Government's Motion (a) For Amendment to Sealing Order and (b) To Quash Subpoena Duces Tecum" stating in substance that they would not oppose the Government's motion to quash the subpoena to Mr. Disney if the Government Memorandum on file with the Clerk were to be unsealed. The Perovich plaintiffs joined in and adopted that memorandum. The defendants in the criminal cases filed a memorandum opposing amendment of the sealing order.

On September 14, 1964, the matter came on for hearing before Judge Stephens. At that hearing, Judge Stephens referred the matter to Judge Westover—despite the urging of counsel for one of the defendants in the criminal cases that Judge Stephens retain "jurisdiction". Judge Stephens characterized the matter as "civil" in nature and expressed the view that because Judge Westover had all of the steel and concrete pipe damage cases before him (now eleven in number) Judge Westover should decide the question raised by the Government's motion. On the same date, September 14, 1964, the parties appeared before Judge Westover who directed that the matter be renoticed for hearing so that he could review the various memoranda that had been filed.

Accordingly, on September 15, 1964, the Government filed its "Second Notice of Hearing on Motion for (a) Amendment to Sealing Order and (b) to Quash Sub-

poena Duces Tecum" (R. pp. 80-82). On September 17, 1964, counsel for the No-Joint plaintiffs filed a Notice of Hearing of renewal of its previous motion to vacate or modify the sealing order originally filed on July 1, 1964 (R. pp. 83-84). Defendants filed a brief in opposition to these motions and the matter came on for hearing before Judge Westover on September 28, 1964, at which time the matter was fully argued.

On October 5, 1964, Judge Westover signed and filed his Order (approved as to form by the No-Joint plaintiffs) which (1) lifted the order sealing the Government Memorandum and (2) quashed the subpoena duces tecum directed to Mr. Disney (R. pp. 115-119).

On October 9, 1964, petitioners filed their petition for writ of prohibition or mandamus, in the alternative, in the Court of Appeals for the Ninth Circuit. On October 12, 1964, that Court ordered the respondents to show cause why the petition should not be granted (R. pp. 197-8). On April 7, 1965, the Court of Appeals issued its opinion denying the petition for either extraordinary writ. In its opinion, the Court however, noted:

> "Having examined the document in camera as the trial court might have done, we have deleted such portions of the memorandum as we have deemed necessary in respect to the policy considerations behind the rule of secrecy of grand jury investigations. We have returned five originals of the document, as deleted (but without disclosing the deletions), to the District Court for filing, without seal, in the five actions below; retaining one copy as so revised for our own Court files, and retaining all excised copies in our own files, under seal."

REASONS FOR REFUSING THE WRIT

Summary of Argument

Petitioners raise four points in support of their contention that the case was incorrectly decided by the Courts below. These points are:

1. Absent a showing of particularized and compelling need grand jury matter may not be disclosed;

2. Substantial reasons requiring grand jury secrecy still exist in this case;

3. Prior disclosure does not justify total disclosure;

4. Disclosure of the Government Memorandum by the Courts below was an abuse of discretion.

These contentions, examined separately or viewed cumulatively, are without merit.

Accepting, for purposes of this petition only,[6] the holding of the Court of Appeals that Rule 6(e) of the Federal Rules of Criminal Procedure was, in fact, applicable to the memorandum in question, it does not follow that the secrecy contemplated by the Rule is perpetual. The Court of Appeals effectively answered that contention when it said:

> "But the fact that Rule 6(e) applies to the Government memorandum is not dispositive of the issue presented by the petition. The secrecy that surrounds the grand jury is not absolute in nature. Rule 6(e) itself expressly provides that matters occurring before

[6] These respondents have consistently contended in the Courts below that the Government Memorandum was not subject to Rule 6(e). Cf. *United States v. Interstate Dress Carriers, Inc.*, 280 F.2d 52 (2nd Cir., 1960). Respondents believe that the Court of Appeals' conclusion to the contrary is wrong. However, it is unnecessary, at this stage to re-examine that question.

> the grand jury can be disclosed where the court so directs."

And it has long been settled that disclosure, pursuant to Rule 6(e), is left to the sound discretion of the trial judge and that discretion may be disturbed only where the discretion has been abused.

Nor are there substantial policy reasons requiring that the grand jury secrecy remain applicable to the memorandum in question. A careful review by the Court of Appeals of the policy considerations behind grand jury secrecy led the Court below to the conclusion that the only basis for maintaining secrecy here was that of "ensuring untrammeled disclosure by *future* grand jury witnesses". (Emphasis original.) And the Court thoroughly examined that reason and eliminated it when it excised portions of the memorandum so as to delete references to witnesses' names.

No question of whether prior disclosure "justifies" total disclosure is presented by this record. The sole question presented to the Court of Appeals which it characterized as "the real question here presented" was whether the District Court abused its discretion in ordering disclosure of the Government memorandum. And nowhere did the No-Joint or Perovich plaintiffs contend that prior disclosure "justified" total disclosure *per se*. Rather, it was urged that prior disclosure was a fact which the District Court properly consider in exercising its judicial discretion in connection with the motions to unseal pending before it. And the Court of Appeals endorsed this view.

Finally, it is clear that there is no abuse of discretion demonstrated by this record. Indeed, quite the contrary is true. Judge Westover could have abused his discretion only if Rule 6(e) would have *required* Judge Stephens to have the memorandum sealed in the first instance. But at no time did the petitioners ever contend that Rule 6(e) *required* Judge Stephens to seal the memorandum. And if Judge Stephens had the power to order the memorandum filed without sealing in the first instance, it cannot conceivably have been an abuse of discretion for Judge Westover to have ordered done what Judge Stephens could have and, we submit, should have ordered in the first instance.

The respondents have had their day in Court. Each of the contentions made here was meticulously examined by the Court of Appeals on a petition for an extraordinary writ. That Court, in effect, granted the petitioners what relief they were entitled to, namely, a deletion of the names of the witnesses appearing in the Government memorandum. No novel question is presented here. A decision on the merits by this Court is likely to have no value whatever as a precedent in future cases. This case was reviewed by the Court of Appeals on its own unique facts. The guidelines or standards for such review have long been settled.

Thus, there are no reasons which warrant further review of any matters in this case by this Court. The petition for a writ of certiorari should be denied.

ARGUMENT

1. THE DISTRICT COURT HAD DISCRETION TO UNSEAL THE DOCUMENT AND THE COURT OF APPEALS CORRECTLY DECIDED THAT THIS DISCRETION WAS NOT ABUSED.

Assuming, *arguendo*, the Government memorandum to be subject to the secrecy strictures of Rule 6(e), that Rule expressly provides that "a juror, attorney, interpreter or stenographer may disclose matters occurring before the grand jury only when so directed by the Court preliminary to or in connection with a judicial proceeding." It has long been settled that disclosure, pursuant to this Rule, is left to the sound discretion of the trial Court. *Pittsburgh Plate Glass Co. v. United States*, 360 U.S. 395, 79 S.Ct. 1237 (1959); *United States v. Socony-Vacuum Oil Co.*, 310 U.S. 150, 60 S.Ct. 811 (1940); *United States v. Procter & Gamble Co.*, 356 U.S. 677, 78 S.Ct. 983 (1958); *United States v. Rose*, 215 F.2d 617 (3rd Cir., 1954); *United States v. Byoir*, 147 F.2d 336 (5th Cir., 1945); *United States v. Consolidated Laundries Corp.*, 291 F.2d 563 (2nd Cir., 1961); *Costello v. United States*, 255 F.2d 389 (8th Cir., 1958).

In *Pittsburgh Plate Glass Co. v. United States*, this Court said:

> "Grand jury secrecy is, of course, not an end in itself. Grand jury secrecy is maintained to serve particular ends. But when secrecy will not serve those ends or when the advantages gained by secrecy are outweighed by a countervailing interest in disclosure, secrecy may, and should, be lifted for to do so in such circumstances would further the fair administration of criminal justice." 360 U.S. at 403.

It could not be an abuse of discretion for Judge Westover to have vacated an order sealing the Government Memorandum *unless Rule 6(e) required that the document be filed under seal in the first instance.* It cannot be seriously suggested that Judge Stephens was powerless to permit, if not to require, the Government to file a memorandum summarizing information obtained from the grand jury investigation in connection with the sentencing of the defendants below. And that is what he did. That the petitioners' argument is wholly devoid of any merit and is fashioned only to meet the exigencies of the treble damage litigation is demonstrated by the fact that not once during the criminal cases did any of them suggest to Judge Stephens that Rule 6(e) *required* that the Government document be sealed and petitioners fail to cite even a single case which holds, or even suggests that Rule 6(e) *required* Judge Stephens to seal the Government memorandum. Clearly, therefore, Judge Westover had the discretion to do what Judge Stephens could have done *ab initio.*

The notion that "a consenting defendant could gain the additional benefit of holding under a seal or stricture of non-disclosure for an indefinite time, information which would otherwise be available to the public, or at least to other litigants who had need of it" was laid to rest in *Olympic Refining Co. v. Carter,* 332 F.2d 260, 265 (9th Cir. 1964), cert. denied 85 S. Ct. 186 (1964).

The record below reflected that Judge Westover had had painstaking experience with the No-Joint and Perovich litigation, as well as the Government civil litigation. Faced with complex litigation in which the parties below

repeatedly have asserted the close relationship between the allegations of proof in the No-Joint and Perovich cases and the indictments, he simply vacated an order which, we submit, should never have been entered in the first place. And, as Judge Westover put it, where a document "has been filed and docketed in a criminal case, everybody has a right to look at it". We know of no rule or case which impairs the validity of that sound reasoning—or which suggests that it is an abuse of discretion to hold, in these circumstances, as Judge Westover did.

In holding that Judge Westover did not abuse his discretion, the Court of Appeals cited its decision in *Olympic Refining Co. v. Carter*, supra, as typifying "judicial appreciation of the benefits of a liberal discovery procedure". In that context, the Court of Appeals pointed out that it seemed

> "highly inequitable and adverse to the principle of federal discovery to allow one party access to a Government document and not the other. It is particularly inequitable when the policy reason for denying the other party access to the document is essentially inapplicable to the given situation. We cannot say the District Court has abused its discretion by ordering the document unsealed."

Thus, prior disclosure did not "justify" disclosure to respondents, but such disclosure certainly was a factor appropriately considered in the exercise of the district judge's discretion.

2. NO POLICY REASONS EXIST WHICH REQUIRE SECRECY TO BE MAINTAINED.

The real issue presented to the Court of Appeals was not whether the district court had the *power*[7] to order disclosure but whether the District Court abused its discretion in so doing. In reaching the conclusion that the District Court did not abuse its discretion, the Court of Appeals agreed with petitioners' contention that a violation of the traditional grand jury secrecy should be permitted only upon a showing of "particularized and compelling need". But the Court of Appeals noted that

> ". . . we cannot treat this test *in vacuo*. We must take recognition first of the fact that where such a 'need' exists is a matter designedly left initially to the discretion of the trial judge. . . . Secondly, it must be kept in mind that in making a determination of when to permit a disclosure of grand jury proceedings, whether to examine not only the need of the party seeking disclosure, but also the policy considerations for grand jury secrecy as they apply to the request for disclosure there under consideration. In other words, if the reasons for maintaining secrecy do not apply at all in a given situation or apply to only an insignificant degree, the parties seeking disclosure should not be required to demonstrate a large compelling need."

The Court of Appeals concluded that the policy reasons for maintaining secrecy applied here "to only an insignificant degree". Carefully examining the policy reasons behind grand jury secrecy and citing this Court's opinion

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[7]Cf. *Ex Parte Uppercu*, 239 U.S. 435 (1915); *Olympic Refining Co. v. Carter*, 332 F.2d 260 (9th Cir., 1964), cert. denied 85 S.Ct. 186 (1964).

in *United States v. Procter & Gamble, supra*, the Court of Appeals concluded that in this case "the only basis for a compelling reason to maintain the traditional grand jury secrecy (was) that of ensuring untrammeled disclosure by *future* grand jury witnesses". (Emphasis original.) In this connection, the Court of Appeals itself deleted references to witnesses' names which were contained in the Government memorandum. The Court of Appeals said:

> "Having examined the document in camera as the trial court might have done, we have deleted such portions of the memorandum as we have deemed necessary in respect to the policy considerations behind the rule of secrecy of grand jury investigations. We have returned five originals of the document, as deleted (but without disclosing the deletions), to the District Court for filing, without seal, in the five actions below; retaining one copy as so revised for our own Court files, and retaining all excised copies in our own files, under seal."

Petitioners' repeated reference to the opinions of this Court in *United States v. Procter & Gamble Co.*, 356 U.S. 677, 78 S.Ct. 983 (1958), and *Pittsburgh Plate Glass Co. v. United States*, 360 U.S. 395, 79 S.Ct. 1237 (1959), are not pertinent to the question presented by this record. Both of those cases involved the disclosure of grand jury *transcript*. In *Procter & Gamble*, this Court, in reversing the dismissal of a civil Government antitrust case for failure of the Government to comply with the District Court's direction to turn over an *entire* grand jury transcript pursuant to a Rule 34 motion of the defendants, said:

> "We only hold that no compelling necessity has been shown for the *wholesale* discovery and production of a grand jury transcript under Rule 34." (Emphasis original; 356 U.S. p. 683.)

And in *Pittsburgh Plate Glass* this Court did no more than to reject defendant's argument that the "trial judge's discretion under Rule 6(e) must be exercised in accordance with the rationale of Jencks". (Referring to the case of *Jencks v. United States*, 353 U.S. 657, 77 S. Ct. 1007 (1957).) In short, this Court held that the grand jury transcript of a witness who also testifies at trial was not available to the defendant as a matter of *right* under the *Jencks* decision.

Finally, petitioners' citation of *Procter & Gamble* and *Pittsburgh Plate Glass* for the proposition that prior disclosure does not justify further disclosure misses the mark. In neither case was there any "prior disclosure." Surely, the *knowledge* of the Government lawyers in those cases cannot be equated with the *actual revelation to defense counsel* here.

The carefully considered opinion of the Court of Appeals, which not only examined and rejected each of the contentions made here, but which also granted petitioners the limited relief of deleting the names of witnesses, reached the correct conclusion. There is no need for this Court to reexamine that result.

CONCLUSION

For the reasons stated herein, the questions posed by petitioners do not merit further consideration by this Court. The Perovich and No-Joint respondents respectfully urge that the petition for certiorari be denied.

Dated, May 11, 1965.

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